BEFORE THE JUDICIAL PANEL ON

MULTIDISTRICT LITIGATION

IN RE: DEPUY ORTHOPAEDICS, INC., ASR HIP IMPLANT PRODUCTS LIABILITY LITIGATION	MDL Docket No. 2197

INTERESTED PARTY DAVID BOWEN'S RESPONSE TO PLAINTIFF MAURICE BRIGHAM'S MOTION FOR TRANSFER OF ACTIONS PURSUANT TO 28 U.S.C. § 1407

Pursuant to Rule 7.1 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, Interested Party David Bowen ("Respondent")[1] respectfully responds to Plaintiff Maurice Brigham's Motion of Plaintiff for Transfer of Actions to the District of New Jersey Pursuant to 28 U.S.C. § 1407 for Coordinated or Consolidated Pretrial Proceedings [Dkt. No. 1]. While Rule 7.1(b) requires that responses to averments in motions be made in numbered paragraphs, numbered averments were not provided in the motion to which this response is directed. Respondent agrees that transfer and coordination or consolidation of these matters is warranted. However, for the reasons stated in this response and the accompanying memorandum of law, Respondent respectfully requests consolidation and transfer of these cases to the Central District of California.

The designer and developer of the defective hip replacement devices at issue in this litigation resides in Los Angeles, California, which is located in the Central District of California. Information and discovery pertaining to this defendant will be highly relevant for supporting the claims alleged in this litigation. In addition, the Central District of California has a more favorable docket than the District of New Jersey, has efficiently managed its civil case

[1] Respondent Bowen is Plaintiff in the case entitled *Bowen v. DePuy Orthopaedics, Inc. et al.*, Case No. CV10-7087 ODW (VBKx), filed on September 22, 2010 in the Central District of California.

dockets and has substantial experience managing MDLs, including product liability litigation. Furthermore, California state court coordination proceedings are inevitable given that a significant number of cases involving the same hip implant devices at issue in this litigation have been and will be filed in California state court. As these state court cases become organized and proceed, there will need to be coordination between federal and state court actions in California, particularly with respect to discovery. Lastly, the Central District of California is a convenient and easily-accessible forum for all parties and counsel.

For the reasons described above, the Respondent respectfully requests that these matters be consolidated and transferred to the Central District of California.

Dated: September 24, 2010

Respectfully submitted,

WEXLER WALLACE LLP

By: _____
Mark J. Tamblyn

Ian J. Barlow
455 Capitol Mall, Suite 231
Sacramento, CA 95814
Telephone: (916) 492-1100
Facsimile: (916) 492-1124

Edward A. Wallace
WEXLER WALLACE LLP
55 West Monroe Street, Suite 3300
Chicago, IL 60603
Telephone: (312) 346-2222
Facsimile: (312) 346-0022

William A. Kershaw
Stuart C. Talley
KERSHAW, CUTTER & RATINOFF, LLP
401 Watt Avenue
Sacramento, California 95864
Telephone: (916) 448-9800
Facsimile: (916) 669-4499

Attorneys for Interested Party David Bowen

BEFORE THE JUDICIAL PANEL ON

MULTIDISTRICT LITIGATION

IN RE: DEPUY ORTHOPAEDICS, INC., ASR HIP IMPLANT PRODUCTS LIABILITY LITIGATION	MDL Docket No. 2197

MEMORANDUM OF LAW IN SUPPORT OF INTERESTED PARTY DAVID BOWEN'S RESPONSE TO PLAINTIFF MAURICE BRIGHAM'S MOTION FOR TRANSFER OF ACTIONS PURSUANT TO 28 U.S.C. § 1407

KERSHAW, CUTTER & RATINOFF, LLP
William A. Kershaw
Stuart C. Talley
401 Watt Avenue
Sacramento, California 95864
Telephone: (916) 448-9800
Facsimile: (916) 669-4499

WEXLER WALLACE LLP
Edward A. Wallace
Mark J. Tamblyn
Ian J. Barlow
455 Capitol Mall, Suite 231
Sacramento, California 95814
Telephone: (916) 492-1100
Facsimile: (916) 492-1124

Counsel for Interested Party David Bowen

I. INTRODUCTION

Interested Party David Bowen ("Respondent")[1] respectfully submits this memorandum in response to Plaintiff Maurice Brigham's Motion for Transfer of Actions Pursuant to 28 U.S.C. § 1407 ("Transfer Motion"). While Respondent agrees that transfer and coordination or consolidation of these matters is warranted, Respondent respectfully submits that the most appropriate transferee forum is the Central District of California.

The reason that Los Angeles is the most appropriate forum for this litigation is that the designer and developer of the defective hip replacement devices that were recalled by DePuy Orthopaedics, Inc. ("DePuy") and Johnson & Johnson Services, Inc. ("Johnson & Johnson"), resides in Los Angeles, California, which is located in the Central District of California. The information and discovery pertaining to this defendant and the design and development of the defective hip implant products will be highly relevant for supporting the claims alleged in each of the cases in this litigation ("Actions").[2] The location of such information in Los Angeles firmly establishes the nexus between these Actions and the Central District of California.

In addition, the Central District of California has a more favorable docket than the District of New Jersey. Judicial statistics demonstrate that the Central District of California is managing fewer MDLs than the District of New Jersey, has effectively and efficiently managed its civil case dockets and has served as the transferee court for numerous MDLs, including massive product liability litigation.

Additionally, California state court coordination proceedings are inevitable given that a significant number of California state court cases have been filed, and will be filed, involving the

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[1] Respondent David Bowen is the Plaintiff in the action entitled *Bowen v. DePuy Orthopaedics, Inc., Johnson & Johnson Services, Inc., Thomas P. Schmalzried, M.D. A Professional Corporation and DOES 1-10*, Case No. CV10-7087 ODW (VBKx), filed on September 22, 2010 in the Central District of California ("Bowen Action"). (*See* Ex. A to Notice of Related Action By Interested Party David Bowen.)

[2] In addition to the Bowen Action, the cases currently included in these proceedings include *Brigham v. DePuy Orthopaedics, Inc., et al.*, Case No. CV 10-3886-EMC (N.D. Cal.); *Margenau v. DePuy Orthopaedics, Inc.*, Case No. 2:10-cv-00369-CEH-SPC (M.D. Fla.); *Fitzgerald v. DePuy Orthopaedics, Inc., et al.*, Case No. 1:10-cv-04822 (N.D. Ill.); *Bloom v. DePuy Orthopaedics, Inc.*, Case No. 1:10-cv-02170-BEL (D. Md.); *Williams v. DePuy Orthopaedics, Inc.*, et al., Case No. 2:10-cv-00691-CW (D. Utah); *Solomon v. DePuy Orthopaedics, Inc., et al.*, Case No. 1:10-cv-4242 (E.D.N.Y.); and *Frey v. DePuy Orthopaedics, Inc. et al.*, Case No. 3:10-cv-1787 (N.D. Tex.).

same defective hip implant devices at issue in these Actions. As these related state court proceedings become organized and proceed, there will need to be coordination between federal and state court actions in California, particularly with respect to discovery.

Lastly, the Central District of California is a convenient and easily-accessible forum for all parties and counsel. A key defendant, along with relevant witnesses and documents, are located in the Central District of California and counsel involved in this litigation are located or have offices in or near the District.

For the reasons discussed below, the Central District of California is the most appropriate forum for consolidating and transferring these Actions, and any potential tag-along actions, for pretrial proceedings.

II. ARGUMENT

A. A Critical Defendant Is Located In The Central District Of California

The Panel considers the nexus between key evidence and the witnesses pertaining to the related actions and the location of the MDL proceeding when determining appropriate transferee fora. *See In re Parcel Tanker Shipping Servs. Antitrust Litig.*, 296 F. Supp. 2d 1370, 1371 (J.P.M.L. 2003) (favoring transfer to Connecticut because "one defendant is located there and documents and witnesses will likely be found there); *In re Carbon Black Antitrust Litig.*, 277 F. Supp. 2d 1380, 1381 (J.P.M.L. 2003) (consolidating eight actions in the district where one defendant had its principal place of business). Defendant Thomas P. Schmalzried, M.D. A Professional Corporation ("Dr. Schmalzried"), a defendant in the Bowen Action and several other actions pending in the Los Angeles Superior Court,[3] has his primary place of business in Los Angeles, California, which is located in the Central District of California.

[3] Respondent Bowen is aware of at least six (6) actions in Los Angeles Superior Court in which Dr. Schmalzried is a defendant: *Avery v. DePuy Orthopaedics, Inc., et al.*, Case No. BC444837, filed on Sept. 1, 2010; *Woodward v. DePuy Orthopaedics, Inc. et al.*, Case No. BC444838, filed on Sept. 1, 2010; *Aronson v. DePuy Orthopaedics, Inc. et al.*, Case No. BC444554, filed on Aug. 30, 2010; *MacGregor v. DePuy Orthopaedics, Inc. et al.*, Case No. BC444555, filed on Aug. 30, 2010; *Almhjell v. DePuy Orthopaedics, Inc. et al.*, Case No. BC444657, filed on Aug. 30, 2010; and *Pierce v. DePuy Orthopaedics, Inc. et al.*, Case No. BC444656, filed on Aug. 30, 2010 (together, "Los Angeles Actions").

Dr. Schmalzried is an essential defendant in this litigation in that he was responsible for designing and developing the defective hip replacement devices that are the subject of this litigation. Additionally, Dr. Schmalzried has publicly admitted that DePuy knew or should have known as early as 2008 that these devices were more difficult to implant properly compared to competitors' devices. (*See, e.g.*, Bowen Action at ¶ 27.) Dr. Schmalzried has also made statements indicating that the hip replacement devices were subject to premature failure. (*Id.*) In litigation premised on defective medical devices that caused substantial financial loss, pain and injury to implant patients, Dr. Schmalzried's testimony and his documents will provide critical evidence for each of the causes of action alleged in these cases and potential tag-along actions. For instance, discovery relating to Dr. Schmalzried will likely reveal decisions and timelines for the design and development of the defective hip implant devices; communications and/or agreements between Dr. Schmalzried, DePuy and Johnson & Johnson regarding the design and development of the implant devices; discussions, studies, testing and analyses of implantation, durability or operational problems of the devices; and findings concerning premature failure rates for the hip replacement devices and the attendant need for revision surgeries. As a result, there is a substantial nexus between these cases and the Central District of California in that the most critical witnesses and documents necessary for establishing plaintiffs' claims are located in the District.

B. The Central District Of California Has The Required Experience And Resources To Adjudicate This MDL

In deciding where a consolidated action should be transferred, the Panel considers the docket pressures of potential fora. *See, e.g., In re Nifedipine Antitrust Litig.*, 266 F. Supp. 2d 1382, 1382-83 (J.P.M.L. 2003) (transferee court's docket is "well suited" to receive the consolidated cases); *In re Pressure Sensitive Labelstock Antitrust Litig.*, 290 F. Supp. 2d 1374, 1376 (J.P.M.L. 2003) (transferee court "enjoys general docket conditions permitting the Panel to effect Section 1407 assignment to a court with the present resources to devote to the pretrial matters that this docket is likely to require"); *In re Parcel Tanker Shipping Servs. Antitrust*

Litigation, 296 F. Supp. 2d 1370, 1371 (J.P.M.L. 2003) (transferee court "has a relatively favorable caseload for accepting this assignment"). When a potential transferee district's docket is congested, it may be overwhelmed by additional complex litigation and undermine principles of judicial economy and fairness to the parties.

The Central District of California has fewer pending MDL cases overall and a greater number of judgeships to handle these actions and potential tag-along actions. There are currently fourteen (14) MDL cases pending in the Central District of California that are being managed by twelve (12) judges, compared to twenty-one (21) MDL cases in the District of New Jersey being handled by eleven (11) judges. *See* United States Judicial Panel on Multidistrict Litigation, www.jpml.uscourts.gov, Docket Information, "Pending MDL Dockets by District as of July 2010," *at http://www.jpml.uscourts.gov/Pending_MDL_Dockets-July-2010.pdf* (last viewed on September 23, 2010). In addition, there are a greater number of judgeships available for handling MDL matters in the Central District of California than in the District of New Jersey. In 2009, there were twenty-eight (28) judgeships in the Central District of California compared to seventeen (17) in the District of New Jersey. *See* Administrative Office of the U.S. Courts, Statistics, Federal Court Management Statistics, 2009 Tables for District Courts, *at http://www.uscourts.gov/viewer.aspx?doc=/cgi-bin/cmsd2009.pl* (last viewed on September 23, 2010). The disparity in the MDL workload of these two courts is apparent. Based on the above statistics, sixty-five (65) percent of judges in the District of New Jersey are presiding over at least one MDL compared to only forty-three (43) percent in the Central District of California.

While Plaintiff Brigham argues that these Actions should be transferred to Judge Wigenton due in part to her involvement in *In re: Zimmer Durom Hip Cup Products Liability Litigation* ("*Zimmer*"), MDL Docket No. 2158,[4] that MDL – which involves over fifty (50)

[4] *See* Brief in Support of Plaintiff's Motion for Transfer of Actions Pursuant to 28 U.S.C. § 1407, at 2, 5-7. [Dkt. No. 1].

cases[5] – is still active. Furthermore, the *Zimmer* MDL involves allegations and defects not present in this litigation.

In addition to the Central District of California's capacity for handling this litigation, the District is also a compelling forum based on the efficiency with which it processes and manages civil proceedings. For example, the median number of months from filing to disposition for civil actions was 5.7 months in the Central District of California, and was 19.0 months from filing to trial. By comparison, the median number of months from filing to disposition for civil actions was 7.6 months in the District of New Jersey, and 37.7 months from filing to trial. *Id.*

Furthermore, the Central District of California has extensive experience managing a wide variety of MDL cases, including products liability actions. As of September 30, 2009, the Central District of California was responsible for terminating seventy-eight (78) MDLs, more than any other district court except the Southern District of New York, and more than twice the number of MDLs terminated in the District of New Jersey. The District of New Jersey has terminated thirty-five (35) MDLs. *See* Judicial Panel on Multidistrict Litigation, www.jpml.uscourts.gov, Statistical Information, 2009 Cumulative Terminated Statistics, *at http://www.jpml.uscourts.gov/Statistics/JPML_Terminated_Litigations-2009.pdf* (last viewed on September 23, 2010).

C. Coordination Between California State And Federal Court Proceedings Will Be Necessary

Due to the significant number of California state court cases that have been filed, and will be filed, involving these defective hip implant devices, California state court coordination proceedings, in the form of California Judicial Council Coordination Proceedings, are inevitable. Respondent Bowen is aware of over ten (10) cases that have been filed in California state courts. In addition to the Los Angeles Actions, cases have been filed in San Diego County Superior

[5] *See* United States Judicial Panel on Multidistrict Litigation, www.jpml.uscourts.gov, Docket Information, "Pending MDL Dockets by District as of July 2010," *at http://www.jpml.uscourts.gov/Pending_MDL_Dockets-July-2010.pdf* (last viewed on September 23, 2010).

Court[6] and San Francisco Superior Court.[7] The majority of the cases filed in California state courts name Dr. Schmalzried as a defendant and are located in Southern California. As the cases filed in state court become organized and proceed, there will be a need for coordination between these and impending California state and federal actions, particularly with regard to discovery. Additionally, by transferring the Actions to the Central District of California, the federal court judge assigned to the MDL can more easily confer with their state court counterpart and, if necessary, can conduct joint hearings on critical matters. If the Actions are sent 3,000 miles away, coordination will be difficult and joint hearings will be impossible.

D. The Central District Of California Is A Well-Suited And Convenient Forum For The Actions

The Panel also considers the convenience of the parties and their counsel in choosing an appropriate transferee district. *See, e.g., In re Air Fare Litig.*, 322 F. Supp. 1013, 1015 (J.P.M.L. 1971) (choosing a particular transferee district because it was "more convenient for counsel, and thus less expensive for their clients"); *In re Publ'n Paper Antitrust Litig.*, 346 F. Supp. 2d 1370, 1372 (J.P.M.L. 2004) (transferring actions to a "geographically convenient location"). This factor also favors consolidation in the Central District of California. As previously stated, one of the critical defendants in this litigation, Dr. Schmalzried, resides in the Central District of California.

In addition, the Central District is located in an easily accessible metropolitan location that is geographically convenient to parties, witnesses, and counsel. *See, e.g., In re Hypodermic Prods. Antitrust Litig.*, 408 F. Supp. 2d 1356, 1357 (J.P.M.L. 2005); *In re Ins. Brokerage Antitrust Litig.*, 360 F. Supp. 2d 1371, 1373 (J.P.M.L. 2005). The Los Angeles International Airport offers numerous flight options to the areas surrounding Warsaw, Indiana and New

[6] *Starry v. DePuy Orthopaedics, Inc.*, Case No. 37-2010-00096149-CU-PL-CTL, filed on July 14, 2010.
[7] *Bemesderfer v. DePuy Orthopedics Inc. et al.*, Case No. CGC-10-501880, filed on July 23, 2010; *Magown v. DePuy Orthopaedics, Inc. et al.*, Case No. CGC-10-500668, filed on July 11, 2010; *Landey v. DePuy Orthopaedics, Inc. et al.*, Case No. CGC-10-502755, file on Aug. 18, 2010; *Lagoe v. DePuy Orthopaedics, Inc. et al.*, Case No. CGC-10-502756, filed on Aug. 18, 2010; and *Spitzig v. DePuy Orthopaedics, Inc. et al.*, Case No. CGC-10-502768, filed on Aug. 18, 2010.

Brunswick, New Jersey (primary places of business for DePuy and Johnson & Johnson) and to the several cities in which parties and counsel are located.

III. CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the pending actions be transferred and coordinated and/or consolidated in the Central District of California, under 28 U.S.C. § 1407, and that all related later-filed actions be transferred thereto as tag-along actions.

Dated: September 24, 2010

Respectfully submitted,

WEXLER WALLACE LLP

By: _____
Mark J. Tamblyn

Ian J. Barlow
455 Capitol Mall, Suite 231
Sacramento, CA 95814
Telephone: (916) 492-1100
Facsimile: (916) 492-1124

Edward A. Wallace
WEXLER WALLACE LLP
55 West Monroe Street, Suite 3300
Chicago, IL 60603
Telephone: (312) 346-2222
Facsimile: (312) 346-0022

William A. Kershaw
Stuart C. Talley
KERSHAW, CUTTER & RATINOFF, LLP
401 Watt Avenue
Sacramento, CA 95864
Telephone: (916) 448-9800
Facsimile: (916) 669-4499

Attorneys for Interested Party David Bowen

BEFORE THE JUDICIAL PANEL ON

MULTIDISTRICT LITIGATION

IN RE: DEPUY ORTHOPAEDICS, INC., ASR HIP IMPLANT PRODUCTS LIABILITY LITIGATION	MDL Docket No. 2197

NOTICE OF RELATED ACTION BY INTERESTED PARTY DAVID BOWEN

Pursuant to Rules 7.2(i) and 7.5(e) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, Interested Party David Bowen hereby notifies the Clerk of the Panel of his action pending in the United States District Court for the Central District of California before the Honorable Otis D. Wright II. *See David Bowen v. DePuy Orthopaedics, Inc., Johnson & Johnson Services, Inc., Thomas P. Schmalzried, M.D. A Professional Corporation and DOES 1-10*, Case No. CV10-7087 ODW (VBKx), filed on September 22, 2010 in the Central District of California – Western Division (Los Angeles). A copy of the Complaint is attached hereto as Exhibit A.

Dated: September 24, 2010

Respectfully submitted,

WEXLER WALLACE LLP

By: _____
Mark J. Tamblyn

Ian J. Barlow
455 Capitol Mall, Suite 231
Sacramento, CA 95814
Telephone: (916) 492-1100
Facsimile: (916) 492-1124

Edward A. Wallace
WEXLER WALLACE LLP
55 West Monroe Street, Suite 3300
Chicago, IL 60603
Telephone: (312) 346-2222
Facsimile: (312) 346-0022

William A. Kershaw
Stuart C. Talley
KERSHAW, CUTTER & RATINOFF, LLP
401 Watt Avenue
Sacramento, California 95864
Telephone: (916) 448-9800
Facsimile: (916) 669-4499

Attorneys for Interested Party David Bowen

EXHIBIT A

WEXLER WALLACE LLP
Mark J. Tamblyn (State Bar No. 179272)
Email: mjt@wexlerwallace.com
Ian J. Barlow (State Bar No. 262213)
Email: ijb@wexlerwallace.com
455 Capitol Mall, Suite 231
Sacramento, California 95814
Telephone: (916) 492-1100
Facsimile: (916) 492-1124

KERSHAW, CUTTER & RATINOFF, LLP
William A. Kershaw (State Bar No. 057486)
Email: wkershaw@kcrlegal.com
Stuart C. Talley (State Bar No. 180374)
Email: stalley@kcrlegal.com
401 Watt Avenue
Sacramento, California 95864
Telephone: (916) 448-9800
Facsimile: (916) 669-4499

Attorneys for *Plaintiff*

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DAVID BOWEN,

Plaintiff,

v.

DEPUY ORTHOPAEDICS, INC., an Indiana Corporation; JOHNSON & JOHNSON SERVICES, INC., a New Jersey Corporation; THOMAS P. SCHMALZRIED, M.D. A Professional Corporation, a California Corporation; and DOES 1-~~100~~ 10, inclusive,

Defendants.

Case No. CV 10-7087 MRP (VBKx)

COMPLAINT FOR:

1) **NEGLIGENCE**
2) **BREACH OF EXPRESS WARRANTY**
3) **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
4) **NEGLIGENT MISREPRESENTATION**
5) **INTENTIONAL MISREPRESENTATION**
6) **UNJUST ENRICHMENT**
7) **FRAUDULENT CONCEALMENT**
8) **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**
9) **STRICT PRODUCTS**

LIABILITY (FAILURE TO WARN AND INSTRUCT)
10) STRICT PRODUCTS LIABILITY (MANUFACTURING DEFECT)
11) STRICT PRODUCTS LIABILITY (DESIGN DEFECT)
12) STRICT PRODUCTS LIABILITY (FAILURE TO ADEQUATELY TEST)

JURY TRIAL DEMANDED

Plaintiff David Bowen ("Plaintiff"), by and through his attorneys, brings this action against DePuy Orthopaedics, Inc. ("DePuy"), Johnson & Johnson Services, Inc. ("Johnson & Johnson") and Dr. Thomas Schmalzried A Professional Corporation ("Dr. Schmalzried") (together, "Defendants"), and alleges the following facts and claims upon personal knowledge as to matters relating to himself, and as to all other matters upon information and belief, as follows:

NATURE OF THE ACTION

1. On August 26, 2010, DePuy announced a massive worldwide recall of approximately 93,000 "metal-on-metal" hip replacement devices that had premature failure rates and generated significant amounts of metallic debris in implant patients. The metallic debris generated by these devices – the ASR XL Acetubular System and the ASR Hip Resurfacing System (together, "Hip Replacement Devices") – caused severe inflammatory reactions in patients' bodies that led to pain and discomfort in the groin, death of tissue in the hip joint and the destruction of bone. In addition, the ball-and-socket joints of these Hip Replacement Devices are made from metals such as cobalt and chromium which can be absorbed in the patient's bloodstream and, in the case of female patients, transferred to infants

during pregnancy.

2. These dangerous and painful conditions required, or will require, implant patients to undergo monitoring, further testing and treatment and to endure extensive and complicated "revision surgeries," additional follow up surgeries to replace the Hip Replacement Device. Revision surgeries to replace the defective devices are more difficult than the initial implantation surgery and may lead to extended debilitation and an increased risk of complications and death. Although the Hip Replacement Devices were intended to last fifteen (15) years or more, many lasted only a few years after they were implanted.

3. DePuy knew that its Hip Replacement Devices were seriously defective as early as 2008, when it had notice that the Food and Drug Administration ("FDA") received numerous complaints that the Hip Replacement Devices suffered from inordinately high failure rates. DePuy did nothing to address these problems. Rather, it continued to aggressively market and sell their Hip Replacement Devices, all the while maintaining that they were safe for use and effective for treating hip pain, damage or disorders. As a result, several thousands of patients have suffered or will suffer extreme, unnecessary and ongoing pain and debilitation.

JURISDICTION AND VENUE

4. This Court has diversity subject matter jurisdiction pursuant to 28 U.S.C. § 1332. The amount in controversy exceeds $75,000 exclusive of interest and costs, and this is an action by an individual Plaintiff against Defendants who are each citizens of different states.

5. Venue is proper pursuant to 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district. The Court has personal jurisdiction over each of the parties in this lawsuit because Defendant Dr. Schmalzried, who designed and developed the

defective Hip Replacement Devices, has his primary place of business in California and purposefully availed himself of the privilege of conducting business activities within the State of California.

PARTIES

6. Plaintiff David Bowen is a resident of Marysville, Washington.

7. Defendant DePuy Orthopaedics, Inc. is an Indiana Corporation with its principal place of business at 700 Orthopaedic Drive, Warsaw, Indiana 46581.

8. Defendant Johnson & Johnson Services, Inc. is a New Jersey Corporation with its principal place of business at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933.

9. Defendant Thomas P. Schmalzried, M.D. A Professional Corporation ("TPS Corp.") is a California corporation with its primary place of business at 2200 W. Third Street, Suite 400, Los Angeles, California 90057.

10. Plaintiff alleges, based on information and belief, that at all relevant times Does One through One Hundred were agents, employee, manufacturers, suppliers, distributors, designers, engineers, retailers, sellers, franchisees, representatives, partners, and related or affiliated entities or providers of services to or on behalf of Defendant. On information and belief, Plaintiff alleges that Defendants, Does One through One Hundred, and other unnamed third parties conspired and combined among themselves to commit the acts complained of herein. Plaintiff does not know the true names and capacities of Defendants Does One through One Hundred, and will seek leave to amend this Complaint to allege such names and capacities as soon as they are ascertained. Any reference made to any defendant by specific name or otherwise, individual or plural, is also a reference to the actions of Does One through One Hundred, inclusive.

FACTUAL ALLEGATIONS

11. The hip joint consists of two parts: 1) the acetabulum, which is the

socket in your hip or pelvic bone; and 2) the femoral head, which is the ball at the top of the femur (thigh bone). The femoral head rotates within the curved surface of the acetabulum. Total hip replacement surgeries require that the hip socket is reshaped and fit with a cup implant that typically consists of a metal shell and a liner, which is intended to serve the same function as cartilage in a healthy hip. In addition, the head or ball of the patient's femur bone is removed and replaced with a new artificial ball which is attached to a femoral stem that is implanted deep into the patient's femur.

12. Patients undergo hip replacement surgeries to treat a variety of disorders and conditions, including severely painful and disabled joints due to osteoarthritis, traumatic arthritis, rheumatoid arthritis, or congenital hip dysplasia; avascular necrosis of the femoral head; acute traumatic fractures of the femoral head and neck; failed previous hip surgeries; and certain cases of ankylosis.

13. DePuy's ASR XL Acetabular System ("Acetabular System") is a modular system designed to restore motion and reduce pain to the hip joint. The device, which is used in total hip replacement procedures, is made up of three components: 1) a metal stem which is inserted inside the femur; 2) a metal femoral head or ball that is connected to the stem; and 3) a metal acetabulum or cup which is positioned in the hip socket and fits to the femoral ball. DePuy's Acetabular System was designed as a "metal-on-metal" implant device, where the metal ball attached to the artificial femoral stem fits against the edge of the metal acetabular cup. DePuy's ASR Hip Resurfacing System is made up of two parts: 1) a cap placed over the natural femoral head or ball; and 2) a one-piece cup that replaces the acetabulum.

14. These systems first became available in July 2003. DePuy's Acetabular System has been sold in the United States since 2005.

15. DePuy's Acetabular System was approved to be marketed and sold in

the United States by the FDA through an abbreviated process. DePuy informed the FDA that the design of the components to the Acetabular System were "substantially equivalent" to other hip implant products on the market that had been previously approved by the FDA. As a result of these representations, the Acetabular System and the components thereof were not required to undergo clinical trials and FDA approval.

16. DePuy represented that its Acetabular System had several advantages over conventional hip replacement systems and hip resurfacing. For instance, DePuy advertised that its Acetabular System was superior to other devices or procedures because it was less prone to dislocation, was subject to reduced wear, matched the hip's natural anatomy, the surgery only required a small incision and was based on a strong clinical history. In addition, DePuy advertised its Acetabular System as a "high performance" hip replacement system, featuring images of a young woman running on a sandy beach with a kinetic graphic around her hip and a man taking an aggressive golf swing.

17. However, contrary to DePuy's representations, its Acetabular System was prone to premature failure and caused patients to experience additional pain and injury. Metal-on-metal hip implant devices that cause the metal femoral ball to press against the metal acetabular cup can create a chisel-like effect, referred to as "edge-loading," and produce a substantial volume of microscopic metallic particles that can cause severe adverse reactions in patients. The metallic debris generated by metal-on-metal implants can ignite severe inflammatory responses in patients, damaging muscles, tendons and other soft tissues and require a follow-up operation to replace the devices soon after implant.

18. DePuy knew that its Hip Replacement Devices were prone to failure for at least two years before warning patients that the devices were defective. Since early 2008, the FDA has received over 400 complaints involving patients in the

United States who experienced premature failure of DePuy Hip Replacement Devices and required additional expensive and painful revision surgeries for new hip implants. "Medical reports since 2008 have indicated that the hip [devices] might be flawed and capable of generating high levels of metallic debris, . . . company officials realized two years ago that it was particularly difficult for surgeons to implant properly . . . ." Barry Meier, *Health System Bears Cost of Implants With No Warranties*, N.Y. TIMES, Apr. 2, 2010 at A1. Nevertheless, Defendants continued to sell the Hip Replacement Devices and market them as safe and effective products, refusing to alert the public to these dangerous design defects.

19. In 2009, a group of researchers in England found that a group of patients with DePuy metal hip implants experienced an adverse reaction to metallic debris generated by the devices. DePuy responded with a statement indicating that these incidences of "metal sensitivity" were lower in its own research studies. In late 2009, DePuy began to phase out the use of its ASR Hip Replacement Devices, reportedly due in part to poor sales. DePuy earned approximately $5.4 billion in sales in 2009.

20. In March 2010, DePuy issued an urgent field safety notice to its customers in the United Kingdom after receiving information that its Acetabular System with smaller head sizes had a higher than expected revision rate – eight (8) to nine (9) percent of patients required revision surgery within three (3) years after implantation. Data presented at the 2010 Annual meeting of the American Academy of Orthopaedic Surgeons ("AAOS") revealed that metal-on-metal implants could be particularly significant for pregnant women in that metal ions could be passed on to their infants during pregnancy.

21. One month later, the United Kingdom Medicines and Healthcare Products Regulatory Agency ("MHRA") issued a device alert for all metal-on-

metal hip replacement devices warning that patients could develop progressive soft tissue reactions to metal wear debris without showing symptoms and that the devices could cause soft tissue damage that may compromise the results of revision surgeries. On May 25, 2010, the MHRA issued another medical device alert warning that DePuy ASR acetabular cups had a higher than anticipated rate of revision, and recommended procedures for following up specifically with those patients with ASR acetabular cup implants. The MHRA recommended follow up on all patients implanted with ASR acetabular cups for at least five (5) years after implant surgery and follow up based on locally agreed protocols beyond five (5) years. Furthermore, the MHRA stated that, for symptomatic patients or whose acetabular cups were implanted at greater than forty-five (45) degrees, such patient should undergo MRIs or ultrasound scans and blood tests to measure cobalt and chromium ion levels.

22. On August 24, 2010, DePuy issued a field safety notice to clinicians with the stern warning "**Do not implant the ASR devices.**" DePuy announced that based on its own ongoing post-market surveillance, company sponsored clinical trials, internal complaints data, national joint replacement registries, published literature and unpublished clinical research reports, it planned to voluntarily recall all of its ASR products. DePuy indicated that it received data from the National Joint Registry (NJR) of England and Wales in 2010 indicating that only five (5) years after implantation approximately twelve (12) percent of patients (1 in 8) with the ASR Hip Resurfacing System and approximately thirteen (13) percent of patients (1 in 8) with the ASR XL Acetabular System needed revision surgery. The risk of revision was highest for female patients and those implanted with Acetabular Systems with smaller head sizes.

23. DePuy stated that the reasons for revision were consistent with those previously reported for its ASR products, including: component loosening,

component malalignment, infection, fracture of the bone, dislocation, metal sensitivity and pain.

24. Two days later, and over two years after DePuy first learned that the FDA began receiving complaints regarding its Hip Replacement Devices, Johnson & Johnson and DePuy announced a voluntary recall of their ASR XL Acetabular System and DePuy ASR Hip Resurfacing System. DePuy estimated that more than 93,000 of its hip replacement devices have been implanted worldwide. As a result, over 11,000 patients could require revision surgery due to the defective design of these devices and DePuy's failure to immediately remove them from the market. DePuy has indicated that no more than five (5) percent of patients should require revisions surgery within five (5) years after implantation. Although artificial hips are intended to last fifteen (15) years or more, a significant number of DePuy's Hip Replacement Devices began to fail within only a few years of implant.

25. Several orthopaedic surgeons have found that the design of the ASR acetabular metal cup, which is shallower than acetabular cups manufactured by other companies, is to blame for the high revision rates. The shallow cup design hinders proper implantation of the device and can lead to several of the problems described above, such as component loosening, malalignment, fracture of the bone and dislocation.

26. As a result of DePuy's defective Hip Replacement Devices, patients have suffered reactions that have caused substantial pain in the groin, death of tissue in the hip joint, loss of surrounding bone, partial or complete immobilization, infection and inflammation, among numerous other sources of pain and injury. Revision surgeries are critical for removing these defective devices. However, revision surgeries, particularly where they involve metal particles, are extremely complex and may leave patients with lasting complications or subject them to risk of further injury or death.

27. Dr. Thomas Schmalzried, an orthopaedic specialist and paid consultant to DePuy, designed and developed the Hip Replacement Devices. Dr. Schmalzried indicated that he and DePuy realized within the last two years that the ASR acetabular cup was more challenging to implant properly than competitors' hip implant cups and recognized that the timeframe for good, long-term function for DePuy's ASR cup was more abbreviated than that for other cups. Dr. Schmalzried received approximately $3.4 million in payments from DePuy over the last two years for his work on Hip Replacement Devices and other devices.

Plaintiff David Bowen

28. Plaintiff David Bowen is a resident of Marysville, Washington. On or about December 7, 2007, Mr. Bowen underwent hip replacement surgery and during this surgery a DePuy ASR Acetabular System was implanted into his body.

29. Beginning in May 2010, Mr. Bowen began experiencing pain around the area of the implant and, on several occasions, felt the hip implant move out of it socket.

30. Additionally, since May 2010, Mr. Bowen has experienced unexplained fatigue. Although Mr. Bowen sought treatment for these problems, his surgeon was unable to determine any cause for the problems with his hip.

31. On or about September 2, 2010, Mr. Bowen received notice from his surgeon that the DePuy ASR Acetabular System that had been implanted into his body was the subject of a recall. Mr. Bowen has been advised that the defects that lead to the recall are most likely the cause of the problems he has been experiencing and that he will likely need revision surgery within the next six months.

FIRST CAUSE OF ACTION

NEGLIGENCE

(Against All Defendants)

32. Plaintiff realleges and hereby incorporates all preceding paragraphs as

if they were fully set forth herein.

33. Defendants had a duty to the Plaintiff to exercise reasonable care in the design, manufacture, marketing and placing into the stream of commerce Hip Replacement Devices, including a duty to ensure that the Hip Replacement Device would be safe for its intended use.

34. Defendants failed to exercise reasonable care in the design, manufacture, marketing and sale of the Hip Replacement Devices. Defendants knew or should have known that the Hip Replacement Devices were subject to premature failure that could result in significant injury and require patients to undergo dangerous and complicated revision surgery. Nevertheless, the Defendants continued to aggressively market the Hip Replacement Devices as safe and effective, refusing to warn patients of the significant design defects.

35. As a direct and proximate result of this breach, Plaintiff has sustained severe physical injuries, severe emotional distress, mental anguish, pain and suffering, economic losses and other damages which Plaintiff will continue to suffer in the future for which Plaintiff is entitled to compensatory, punitive, equitable damages and declaratory relief in an amount to be proven at trial.

SECOND CAUSE OF ACTION

BREACH OF EXPRESS WARRANTY

(Against DePuy, Johnson & Johnson and DOES 1-100)

36. Plaintiff realleges and hereby incorporates all preceding paragraphs as if they were fully set forth herein.

37. Defendants designed, manufactured, marketed and placed into the stream of commerce the Hip Replacement Devices at issue in this case.

38. Defendants expressly warranted to the Plaintiff by affirmations, descriptions, samples, advertising, packaging, publications, package inserts, the internet, correspondence and other communications from Defendants, and further

reiterated and disseminated by and through the officers, agents, representatives, servants, or employees of Defendants acting within the scope of their authority that the Hip Replacement Devices were safe, effective and fit to perform the ordinary and represented purpose of treating hip pain, conditions and/or disorders.

39. These express warranties and representations were false in that the Hip Replacement Devices failed prematurely, were not safe or fit for their warranted, advertised, ordinary and intended purpose of providing safe and effective treatment of hip pain, conditions and/or disorders and were in fact defective, or would not pass without objection in the trade or industry in terms of being unable to provide consistent and reliable treatment or relief through ordinary use.

40. Plaintiff was a foreseeable user of the product and relied on the skill, judgment, representations and warranties of Defendants.

41. The product failed while it was being used for its intended purpose.

42. As a direct and proximate result of this breach, Plaintiff has sustained severe physical injuries, severe emotional distress, mental anguish, pain and suffering, economic losses and other damages which Plaintiff will continue to suffer in the future for which Plaintiff is entitled to compensatory, punitive, equitable damages and declaratory relief in an amount to be proven at trial.

THIRD CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(Against DePuy, Johnson & Johnson and DOES 1-100)

43. Plaintiff realleges and hereby incorporates all preceding paragraphs as if they were fully set forth herein.

44. As a manufacturer, distributor, and/or seller of the Hip Replacement Devices, Defendants are "merchants."

45. The Hip Replacement Devices are "goods."

46. Implied in every sale of the Hip Replacement Devices is a warranty

of merchantability that requires, inter alia, that the Hip Replacement Devices pass without objection in the trade and are fit for the ordinary purposes for which hip replacement devices are used.

47. At the time Defendants designed, manufactured, marketed and placed into the stream of commerce the Hip Replacement Devices, Defendants knew the use for which the Hip Replacement Devices were intended.

48. Defendant impliedly represented and warranted that the Hip Replacement Devices were safe and fit for the ordinary purposes for which such goods are sold and used, including treating hip pain, conditions and/or disorders.

49. Plaintiff reasonably relied upon the skill and judgment of Defendants regarding the quality, safety and merchantability of the Hip Replacement Devices.

50. Defendant breached this implied warranty because the Hip Replacement Devices were defective, unsafe, prematurely failed and required patients to undergo revision surgery.

51. As a direct and proximate result of this breach, Plaintiff has sustained severe physical injuries, severe emotional distress, mental anguish, pain and suffering, economic losses and other damages which Plaintiff will continue to suffer in the future for which Plaintiff is entitled to compensatory, punitive, equitable damages and declaratory relief in an amount to be proven at trial.

FOURTH CAUSE OF ACTION

NEGLIGENT MISREPRESENTATION

(Against DePuy, Johnson & Johnson and DOES 1-100)

52. Plaintiff realleges and hereby incorporates all preceding paragraphs as if they were fully set forth herein.

53. Defendants negligently and recklessly misrepresented various material facts regarding the quality and safety of the Hip Replacement Devices, and under circumstances where Defendants either knew or, in the exercise of reasonable care,

should have known that the representations were not true or were not known to be true. These misrepresentations were contained in various affirmations, descriptions, samples, advertising, packaging, publications, package inserts, the internet, correspondence and other communications from Defendants, and such misrepresentations were further reiterated and disseminated by the officers, agents, representatives, servants, or employees of Defendants acting within the scope of their authority.

54. Defendants' misrepresentations were intended to induce the Plaintiff to purchase or have implanted their Hip Replacement Devices.

55. In reliance upon these misrepresentations, Plaintiff purchased and obtained a Hip Replacement Device. Had Plaintiff known the true facts, including but not limited to the fact that the Hip Replacement Devices were subject to premature failure, resulted in substantial pain and additional injury and required complicated and dangerous revision surgery, he would not have purchased and obtained the Hip Replacement Device.

56. As a direct and proximate result of Defendants' negligent misrepresentations, Plaintiff has sustained severe physical injuries, severe emotional distress, mental anguish, pain and suffering, economic losses and other damages which Plaintiff will continue to suffer in the future for which Plaintiff is entitled to compensatory, punitive, equitable damages and declaratory relief in an amount to be proven at trial.

FIFTH CAUSE OF ACTION

INTENTIONAL MISREPRESENTATION

(Against DePuy, Johnson & Johnson and DOES 1-100)

57. Plaintiff realleges and hereby incorporates all preceding paragraphs as if they were fully set forth herein.

58. Defendants have a duty to provide accurate and complete information

regarding their Hip Replacement Devices. Defendants possessed evidence demonstrating the increased frequency and severity of adverse events occurring with the Hip Replacement Devices. Defendants breached that duty by intentionally misrepresenting material facts regarding the Hip Replacement Devices.

59. Upon information and belief, Defendants intentionally delayed the dissemination of any evidence of the increased likelihood of injury from the Hip Replacement Devices.

60. As set forth in detail, Defendants received reports of defects and increased failure rates in the Hip Replacement Devices from various sources before announcing the voluntary recall. Defendants intentionally withheld this information, while continuing to market and promote the devices for implantation in individuals such as Plaintiff.

61. Defendants knew or should have known as early as 2008 that the Hip Replacement Devices were subject to premature failure, resulted in substantial pain and additional injury, and required complicated and dangerous revision surgery.

62. Had Plaintiff known or been aware of these facts, he would not have purchased and obtained a Hip Replacement Device.

63. Defendants purposefully concealed, omitted, misstated, and downplayed the health hazards and risks associated with the use of the Hip Replacement Devices. For instance, Defendants knowingly and intentionally misrepresented that the Hip Replacement Devices were "high performance" devices that were less prone to dislocation and based on a "strong clinical history."

64. Defendants engaged in the acts and omissions described above with the intent that the Plaintiff would rely thereon and to induce him to purchase and obtain a Hip Replacement Device.

65. Plaintiff justifiably relied to his detriment on Defendants' intentional and fraudulent misrepresentations and/or omissions. This reliance proximately

caused the injuries as damages detailed herein.

66. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has sustained severe physical injuries, severe emotional distress, mental anguish, pain and suffering, economic losses and other damages which Plaintiff will continue to suffer in the future for which Plaintiff is entitled to compensatory, punitive, equitable damages and declaratory relief in an amount to be proven at trial.

SIXTH CAUSE OF ACTION

UNJUST ENRICHMENT

(Against All Defendants)

67. Plaintiff realleges and hereby incorporates all preceding paragraphs as if they were fully set forth herein.

68. By their wrongful acts and omissions, Defendants have profited and benefited from the design and sale of Hip Replacement Devices to the Plaintiff and other consumers who would not have purchased and obtained the devices had they known that the Hip Replacement Devices were defective.

69. Defendants were aware and had knowledge of the benefit they were receiving as a result of their wrongful acts and omissions, as hereinabove alleged, and have enjoyed the benefit of their financial gains, to the detriment and at the expense of the Plaintiff.

70. Defendants' retention of some or all of the monies they have gained through their wrongful acts and practices would be unjust considering the circumstances of their obtaining those monies.

71. Plaintiff is entitled to seek restitution from Defendants and an order disgorging all profits, benefits, and other compensation obtained by Defendants for their wrongful conduct.

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SEVENTH CAUSE OF ACTION

FRAUDULENT CONCEALMENT

(Against DePuy, Johnson & Johnson and DOES 1-100)

72. Plaintiff realleges and hereby incorporates all preceding paragraphs as if they were fully set forth herein.

73. Defendants have a duty to provide accurate and complete information regarding their Hip Replacement Devices. Defendants possessed evidence demonstrating the increased frequency and severity of adverse events relating to the Hip Replacement Devices.

74. Defendants knew or should have known as early as 2008 that the Hip Replacement Devices were subject to premature failure, resulted in substantial pain and additional injury, and required complicated and dangerous revision surgery.

75. As alleged herein, in the course of conducting its business of designing, manufacturing, marketing and placing into the stream of commerce Hip Replacement Devices, Defendants fraudulently concealed and failed to disclose the following material information:

a. Defendants knew or had reason to know that their Hip Replacement Devices were subject to premature failure and resulted in pain and additional injury;

b. Defendants knew or had reason to know that Hip Replacement Device patients would require complicated and dangerous revision surgery

76. Rather than disclosing these material facts, Defendants prevented physicians and the public from learning of them in part by aggressively marketing the Hip Replacement Devices as safe and effective products.

77. Defendants' willful concealment and failures to disclose were made with the intent to induce Plaintiff's justifiable reliance, and in fact did so, as

evidenced by the Plaintiff purchasing and obtaining the Hip Replacement Device for implantation by his physician. In the alternative, reliance on the part of Plaintiff can be properly presumed.

78. Plaintiff, unaware of Defendants' concealment or suppression of these material facts, obtained the Hip Replacement Device, reasonably relying on the misleading representations and omissions of the Defendants. Plaintiff could not have discovered, in the exercise of reasonable diligence, Defendants' fraud and failure to disclose.

79. Had Plaintiff known of the concealed facts, he would not have purchased and obtained the Hip Replacement Device.

80. As a direct and proximate result of Defendants' fraudulent concealment Plaintiff has sustained severe physical injuries, severe emotional distress, mental anguish, pain and suffering, economic losses and other damages which Plaintiff will continue to suffer in the future for which Plaintiff is entitled to compensatory, punitive, equitable damages and declaratory relief in an amount to be proven at trial.

EIGHTH CAUSE OF ACTION

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

(Against DePuy, Johnson & Johnson and DOES 1-100)

81. Plaintiff realleges and hereby incorporates all preceding paragraphs as if they were fully set forth herein.

82. Defendants carelessly and negligently designed, manufactured, marketed and placed into the stream of commerce the Hip Replacement Devices, carelessly and negligently concealed Hip Replacement Device defects from Plaintiff, and carelessly and negligently misrepresented the quality, safety and effectiveness of the Hip Replacement Devices.

83. Defendants also failed to advise the Plaintiff what they knew about the

dangerous nature of the Hip Replacement Devices.

84. Plaintiff was directly impacted by Defendants' carelessness and negligence, in that Plaintiff has sustained emotional distress, severe physical injuries, economic losses, and other damages as a direct result of the decision to purchase and have implanted a defective and dangerous products designed, manufactured, marketed and sold by Defendants.

85. As a direct and proximate result of Defendants' wrongful conduct Plaintiff has sustained severe physical injuries, severe emotional distress, mental anguish, pain and suffering, economic losses and other damages which Plaintiff will continue to suffer in the future for which Plaintiff is entitled to compensatory, punitive, equitable damages and declaratory relief in an amount to be proven at trial.

NINTH CAUSE OF ACTION

STRICT PRODUCTS LIABILITY – FAILURE TO WARN AND INSTRUCT

(Against All Defendants)

86. Plaintiff realleges and hereby incorporates all preceding paragraphs as if they were fully set forth herein.

87. Defendants were engaged in the design, manufacture, marketing and sales of Hip Replacement Devices.

88. At the time these Hip Replacement Devices were placed into the stream of commerce and designed, manufactured, marketed and sold by Defendants they were defective because Defendants knew or should have known that the Hip Replacement Devices were subject to premature failure, resulted in substantial pain and additional injury and required complicated and dangerous revision surgery but failed to give Plaintiff and others adequate warning of such risks. In addition, Defendants knew at the time the Hip Replacement Devices were placed into the stream of commerce that the devices would be implanted in patients in need of

treatment for hip pain, conditions and/or disorders.

89. Defendants distributed and sold the Hip Replacement Devices in the condition in which the devices left their place of manufacture, in their original form of manufacture, which included the defects described above. The Hip Replacement Devices were expected to and did reach Plaintiff without substantial change in their condition as manufactured and sold by Defendants.

90. The Hip Replacement Device was implanted and used in the manner for which it was intended, that is for treatment of hip pain, conditions and/or disorders. This use has resulted in injury to Plaintiff.

91. As a direct and proximate result of Defendants' wrongful conduct Plaintiff has sustained severe physical injuries, severe emotional distress, mental anguish, pain and suffering, economic losses and other damages which Plaintiff will continue to suffer in the future for which Plaintiff is entitled to compensatory, punitive, equitable damages and declaratory relief in an amount to be proven at trial.

TENTH CAUSE OF ACTION

STRICT PRODUCTS LIABILITY – MANUFACTURING DEFECT

(Against All Defendants)

92. Plaintiff realleges and hereby incorporates all preceding paragraphs as if they were fully set forth herein.

93. Defendants were engaged in the design, manufacture, marketing and sales of Hip Replacement Devices.

94. The Hip Replacement Devices are defectively manufactured because the foreseeable risks of malfunction and failure outweigh the benefits associated with the Hip Replacement Devices.

95. The Hip Replacement Devices were defectively manufactured in that at the time they were placed into the stream of commerce the devices were subject

to premature failure, resulted in substantial pain and additional injury and required complicated and dangerous revision surgery when used in a foreseeable manner. Had the Hip Replacement Devices not deviated from product specifications, they would not have failed.

96. The Hip Replacement Devices were expected to and did reach the Plaintiff without substantial change to their mechanical function upon the implanting of the Hip Replacement Device.

97. Defendants knew, or had reason to know, of deficiencies and defects in the manufacture of the Hip Replacement Devices. Defendants also knew or should have known of the manufacturing defects and the risk of serious bodily injury that exceeded the benefits associated with the Hip Replacement Devices.

98. Furthermore, the Hip Replacement Devices and their defects presented an unreasonably dangerous risk beyond what the ordinary patient or consumer would reasonably expect.

99. Defendants failed to advise the Plaintiff of what it knew about the dangerous nature of the Hip Replacement Devices.

100. The Hip Replacement Devices are inherently dangerous for their intended use due to manufacturing defects and improper functioning. Defendants are therefore strictly liable.

101. As a direct and proximate result of Defendants' wrongful conduct Plaintiff has sustained severe physical injuries, severe emotional distress, mental anguish, pain and suffering, economic losses and other damages which Plaintiff will continue to suffer in the future for which Plaintiff is entitled to compensatory, punitive, equitable damages and declaratory relief in an amount to be proven at trial.

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ELEVENTH CAUSE OF ACTION

STRICT PRODUCTS LIABILITY – DESIGN DEFECT

(Against All Defendants)

102. Plaintiff realleges and hereby incorporates all preceding paragraphs as if they were fully set forth herein.

103. Defendants were engaged in the design, manufacture, marketing and sales of Hip Replacement Devices.

104. At the time these Hip Replacement Devices were placed into the stream of commerce and implanted in the Plaintiff and others they were defective in their design in that they were subject to premature failure, resulted in substantial pain and additional injury and required complicated and dangerous revision surgery when used in a foreseeable manner.

105. The Hip Replacement Devices were expected to and did reach the Plaintiff without substantial change to their mechanical function upon implantation.

106. Defendants knew, or had reason to know, of defects in the design of the Hip Replacement Devices.

107. Furthermore, the Hip Replacement Devices and their defects presented an unreasonably dangerous risk beyond what the ordinary consumer would reasonably expect.

108. Defendants failed to advise the Plaintiff of what it knew about the dangerous nature of the Hip Replacement Devices.

109. As a direct and proximate result of Defendants' wrongful conduct Plaintiff has sustained severe physical injuries, severe emotional distress, mental anguish, pain and suffering, economic losses and other damages which Plaintiff will continue to suffer in the future for which Plaintiff is entitled to compensatory, punitive, equitable damages and declaratory relief in an amount to be proven at trial.

TWELFTH CAUSE OF ACTION

STRICT PRODUCTS LIABILITY – FAILURE TO ADEQUTELY TEST

(Against All Defendants)

110. Plaintiff realleges and hereby incorporates all preceding paragraphs as if they were fully set forth herein.

111. Defendants were engaged in the design, manufacture, marketing and sales of Hip Replacement Devices.

112. Defendants misrepresented to Plaintiff and others that the Hip Replacement Devices were safe and effective for the treatment of hip pain, conditions and/or disorders.

113. However, Defendants failed to adequately test the Hip Replacement Devices to ensure that they were not subject to premature failure, would not result in substantial pain and additional injury and would not require complicated and dangerous revision surgery.

114. Plaintiff would not have undergone surgery to implant the Hip Replacement Device had the Defendants adequately tested the Hip Replacement Devices and disclosed the results of those tests to the Plaintiff and the public.

115. As a direct and proximate result of Defendants' wrongful conduct Plaintiff has sustained severe physical injuries, severe emotional distress, mental anguish, pain and suffering, economic losses and other damages which Plaintiff will continue to suffer in the future for which Plaintiff is entitled to compensatory, punitive, equitable damages and declaratory relief in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. For all actual, general, special, incidental, statutory, consequential, punitive and non-economic damages to which Plaintiff is entitled,

including but not limited to medical expenses, loss of earnings, loss of consortium, disfigurement, pain and suffering, mental anguish and emotional distress;

2. For restitution, disgorgement and/or other equitable relief as the Court deems proper;

3. For pre-judgment and post-judgment interest;

4. For reasonable attorneys' fees and costs of suit, including expert witness fees; and

5. For such other and further relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury on all issues so triable.

DATED: September 22, 2010

WEXLER WALLACE LLP

Mark J. Tamblyn

Ian J. Barlow
455 Capitol Mall, Suite 231
Sacramento, CA 95814
Telephone: (916) 492-1100
Facsimile: (916) 492-1124

KERSHAW, CUTTER & RATINOFF, LLP
William A. Kershaw
Stuart C. Talley
401 Watt Avenue
Sacramento, CA 95864
Telephone: (916) 448-9800
Facsimile: (916) 669-4499

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Mariana P. Pfaelzer and the assigned discovery Magistrate Judge is Victor B. Kenton.

The case number on all documents filed with the Court should read as follows:

CV10- 7087 MRP (VBKx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

The United States District Judge assigned to this case will review all filed discovery motions and thereafter, on a case-by-case or motion-by-motion basis, may refer discovery related motions to the Magistrate Judge for hearing and determination

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NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

[X] **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

[ ] **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

[ ] **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Name & Address: Mark J. Tamblyn (SBN 179272)
Wexler Wallace LLP
455 Capitol Mall, Ste. 231
Sacramento, Ca 95814
(916) 492-1100

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

David Bowen

PLAINTIFF(S)

v.

SEE ATTACHMENT

DEFENDANT(S).

CASE NUMBER

CV10-7087 MRP (VBKx)

SUMMONS

TO: DEFENDANT(S): SEE ATTACHMENT

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Mark J. Tamblyn, whose address is Wexler Wallace LLP, 455 Capitol Mall, Ste. 231, Sacramento, CA 95814. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Dated: SEP 22 2010

Clerk, U.S. District Court

By: _____
Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

ATTACHMENT TO SUMMONS

(Defendants Continued)

DEPUY ORTHOPAEDICS, INC., an Indiana Corporation; JOHNSON & JOHNSON SERVICES, INC., a New Jersey Corporation; THOMAS P. SCHMALZRIED, M.D. A Professional Corporation, a California Corporation; and DOES 1-~~100~~ 10, inclusive,

Defendants.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)	DEFENDANTS
DAVID BOWEN	SEE ATTACHMENT
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)	Attorneys (If Known)
Mark J. Tamblyn (916) 492-1100 Wexler Wallace LLP 455 Capitol Mall, Suite 231, Sacramento, CA 95814	

II. BASIS OF JURISDICTION (Place an X in one box only.)

☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)

☐ 2 U.S. Government Defendant ☑ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☑ 1	Incorporated or Principal Place of Business in this State	☐ 4	☑ 4
Citizen of Another State	☑ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☑ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. ORIGIN (Place an X in one box only.)

☑ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☑ Yes ☐ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☐ Yes ☑ No ☑ MONEY DEMANDED IN COMPLAINT: $ over $75,000

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

SEE ATTACHMENT

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS PERSONAL INJURY	TORTS PERSONAL PROPERTY	PRISONER PETITIONS	PERSONAL INJURY
☐ 400 State Reapportionment	☐ 110 Insurance	☐ 310 Airplane	☐ 370 Other Fraud	☐ 510 Motions to Vacate Sentence Habeas Corpus	☐ 710 Fair Labor Standards Act
☐ 410 Antitrust	☐ 120 Marine	☐ 315 Airplane Product Liability	☐ 371 Truth in Lending	☐ 530 General	☐ 720 Labor/Mgmt. Relations
☐ 430 Banks and Banking	☐ 130 Miller Act	☐ 320 Assault, Libel & Slander	☐ 380 Other Personal Property Damage	☐ 535 Death Penalty	☐ 730 Labor/Mgmt. Reporting & Disclosure Act
☐ 450 Commerce/ICC Rates/etc.	☐ 140 Negotiable Instrument	☐ 330 Fed. Employers' Liability	☐ 385 Property Damage Product Liability	☐ 540 Mandamus/ Other	☐ 740 Railway Labor Act
☐ 460 Deportation	☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 340 Marine	BANKRUPTCY	☐ 550 Civil Rights	☐ 790 Other Labor Litigation
☐ 470 Racketeer Influenced and Corrupt Organizations	☐ 151 Medicare Act	☐ 345 Marine Product Liability	☐ 422 Appeal 28 USC 158	☐ 555 Prison Condition	☐ 791 Empl. Ret. Inc. Security Act
☐ 480 Consumer Credit	☐ 152 Recovery of Defaulted Student Loan (Excl. Veterans)	☐ 350 Motor Vehicle	☐ 423 Withdrawal 28 USC 157	FORFEITURE/PENALTY	PROPERTY RIGHTS
☐ 490 Cable/Sat TV	☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 355 Motor Vehicle Product Liability	CIVIL RIGHTS	☐ 610 Agriculture	☐ 820 Copyrights
☐ 810 Selective Service	☐ 160 Stockholders' Suits	☐ 360 Other Personal Injury	☐ 441 Voting	☐ 620 Other Food & Drug	☐ 830 Patent
☐ 850 Securities/Commodities/ Exchange	☐ 190 Other Contract	☐ 362 Personal Injury-Med Malpractice	☐ 442 Employment	☐ 625 Drug Related Seizure of Property 21 USC 881	☐ 840 Trademark
☐ 875 Customer Challenge 12 USC 3410	☐ 195 Contract Product Liability	☑ 365 Personal Injury-Product Liability	☐ 443 Housing/Accommodations	☐ 630 Liquor Laws	SOCIAL SECURITY
☐ 890 Other Statutory Actions	☐ 196 Franchise	☐ 368 Asbestos Personal Injury Product Liability	☐ 444 Welfare	☐ 640 R.R. & Truck	☐ 861 HIA (1395ff)
☐ 891 Agricultural Act	REAL PROPERTY	IMMIGRATION	☐ 445 American with Disabilities - Employment	☐ 650 Airline Regs	☐ 862 Black Lung (923)
☐ 892 Economic Stabilization Act	☐ 210 Land Condemnation	☐ 462 Naturalization Application	☐ 446 American with Disabilities - Other	☐ 660 Occupational Safety /Health	☐ 863 DIWC/DIWW (405(g))
☐ 893 Environmental Matters	☐ 220 Foreclosure	☐ 463 Habeas Corpus-Alien Detainee	☐ 440 Other Civil Rights	☐ 690 Other	☐ 864 SSID Title XVI
☐ 894 Energy Allocation Act	☐ 230 Rent Lease & Ejectment	☐ 465 Other Immigration Actions			☐ 865 RSI (405(g))
☐ 895 Freedom of Info. Act	☐ 240 Torts to Land				FEDERAL TAX SUITS
☐ 900 Appeal of Fee Determination Under Equal Access to Justice	☐ 245 Tort Product Liability				☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 950 Constitutionality of State Statutes	☐ 290 All Other Real Property				☐ 871 IRS-Third Party 26 USC 7609

FOR OFFICE USE ONLY: Case Number: CV10-7087 MRP (VBKx)

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☑ No ☐ Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☑ No ☐ Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:
(Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Washington

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	Indiana New Jersey

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

*** Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties**
Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): _____ Date September 22, 2010

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

ATTACHMENT TO CIVIL CASE COVER SHEET

(Defendants Continued)

DEPUY ORTHOPAEDICS, INC., an Indiana Corporation; JOHNSON & JOHNSON SERVICES, INC., a New Jersey Corporation; THOMAS P. SCHMALZRIED, M.D. A Professional Corporation, a California Corporation; and DOES 1-100, inclusive,

Defendants.

(Causes of Action Continued)

1. Negligence
2. Breach of Express Warranty
3. Breach of Implied Warranty of Merchantability
4. Negligent Misrepresentation
5. Intentional Misrepresentation
6. Unjust Enrichment
7. Fraudulent Concealment
8. Negligent Infliction of Emotional Distress
9. Strict Products Liability – Failure to Warn and Instruct
10. Strict Products Liability – Manufacturing Defect
11. Strict Products Liability – Design Defect
12. Strict Products Liability – Failure to Adequately Test

BEFORE THE JUDICIAL PANEL ON

MULTIDISTRICT LITIGATION

IN RE: DEPUY ORTHOPAEDICS, INC., ASR HIP IMPLANT PRODUCTS LIABILITY LITIGATION	MDL Docket No. 2197

CERTIFICATE OF SERVICE

KERSHAW, CUTTER & RATINOFF, LLP
William A. Kershaw
Stuart C. Talley
401 Watt Avenue
Sacramento, California 95864
Telephone: (916) 448-9800
Facsimile: (916) 669-4499

WEXLER WALLACE LLP
Edward A. Wallace
Mark J. Tamblyn
Ian J. Barlow
455 Capitol Mall, Suite 231
Sacramento, California 95814
Telephone: (916) 492-1100
Facsimile: (916) 492-1124

Counsel for Interested Party David Bowen

I, Jennifer Estabrook, do hereby declare as follows:

I am employed by Wexler Wallace LLP, 455 Capitol Mall, Suite 231, Sacramento, California, 95814. I am over the age of eighteen years and am not a party to this action. On September 24, 2010, I served the attached:

(1) **INTERESTED PARTY DAVID BOWEN'S RESPONSE TO PLAINTIFF MAURICE BRIGHAM'S MOTION FOR TRANSFER OF ACTIONS PURSUANT TO 28 U.S.C. § 1407;**

(2) **MEMORANDUM OF LAW IN SUPPORT OF INTERESTED PARTY DAVID BOWEN'S RESPONSE TO PLAINTIFF MAURICE BRIGHAM'S MOTION FOR TRANSFER OF ACTIONS PURSUANT TO 28 U.S.C. § 1407;**

(3) **NOTICE OF RELATED ACTION BY INTERESTED PARTY DAVID BOWEN;**

(4) **NOTICE OF APPEARANCE;**

and this **CERTIFICATE OF SERVICE**, by United States mail by placing the documents listed above for collection and mailing following the firm's ordinary business practices in a sealed envelope with postage thereon fully prepaid as set forth on the attached service list.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 24th day of September, 2010.

Jennifer Estabrook

Judicial Panel On Multidistrict Litigation - Panel Service List

Docket: **2197 - IN RE: DePuy Orthopaedics, Inc., ASR Hip Implant Products Liability Litigation**
Status: **Pending On / /**
Transferee District:
Judge:
Transferee District Master Docket No.:

Report key: *** Signifies that an appearance was made on behalf of the party by the representing attorney.**
 # Specified party was dismissed in some, but not all, of the actions in which it was named as a party.
All counsel and parties no longer active in this litigation have been suppressed.

ATTORNEY - FIRM	REPRESENTED PARTY(S)
Borri, Gregg J. GREGG J BORR LAW OFFICES 61 Broadway Suite 2820 New York NY 10006 Phone No.:(212) 980-8866 Fax No.: (212) 208-0969	Margenau, Kathleen
Burns, Jack B. 411 South Main P.O. Box 1398 Cedar City UT 847211398 Phone No.: Fax No.:	Williams, Hilda Frances
	Williams, William
Jayatilaka, Shireen . MCCARTHY & WINKELMAN LLP 4201 Northview Drive Suite 410 Bowie MD 20716 Phone No.:(301) 262-7422 Fax No.: (301) 262-0562 shireen@mccarthywinkelman.com	Bloom, Sandra*
McCoy, Michael Steven . FULBRIGHT & JAWORSKI LLP 1301 McKinney Suite 5100 Houston TX 770103095 Phone No.:(713) 651-5650 Fax No.: (713) 651-5246	Ceramtec Ag
Sotoodeh, Pamela G. LAW GROUP LTD Three First National Plaza 50th Floor Chicago IL 60605 Phone No.:(312) 558-6444 Fax No.: (312) 558-1112 pgs@thelawgroupltd.com	Fitzgerald, Patrick Joseph*
Taschner, Dana B. LANIER LAW FIRM PC 2049 Century Park East Suite 1940 Los Angeles CA 90067 Phone No.:(310) 277-5100 Fax No.: (310) 277-5103 dbt@lanierlawfirm.com	Brigham, Maurice*

Tucker, Robert C.
TUCKER ELLIS & WEST LLP
925 Euclid Avenue
Suite 1150
Cleveland OH 441151414
Phone No.:(216) 696-4093
Fax No.: (216) 592-5009
robert.tucker@tuckerellis.com

Depuy Orthopaedics, Inc.*

Johnson & Johnson Services, Inc.*

Johnson & Johnson*

SERVICE LIST, CONT'D.

ATTORNEY – FIRM	REPRESENTED PARTY(S)
Michael A. London DOUGLAS & LONDON 111 John St., 8th Floor New York, NY 10038	Solomon, Debra
Steven Michael Johnson JOHNSON LAW FIRM 3437 W. 7th St., Ste. 258 Fort Worth, TX 76107	Frey, Jerre